

BILL W. FRASER

IBLA 77-128

Decided June 1, 1977

Appeal from decision dated June 23, 1976, of the Montana District Office, Bureau of Land Management, cancelling grazing lease (2501737).

Affirmed in part, reversed in part and remanded.

1. Grazing Leases: Generally! ! Grazing Leases: Cancellation or Reduction! ! Taylor Grazing Act: Generally

Under the terms and conditions in 43 CFR 4125.1-1(i) placed by the Department on the continued effectiveness of grazing leases, as allowed by section 15 of the Taylor Grazing Act, a grazing lease may be canceled in its entirety in order to use the land included in it as a wildlife habitat.

2. Grazing Leases: Generally! ! Grazing Leases: Cancellation or Reduction

Under section 402(g) of the Federal Land Policy and Management Act, except in cases of emergency, a cancellation of a grazing lease by the Government after October 21, 1976, may not be given effect until 2 years after the lessee has received notification of the cancellation of the lease. This provision is construed as applicable to all existing grazing leases, licenses and permits, including those issued prior to the Act.

APPEARANCES: Bill W. Fraser, Chester, Montana, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On April 2, 1973, Bill W. Fraser (appellant) and the Bureau of Land Management (the BLM) entered into grazing lease number

2501737 pursuant to section 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970). The lease granted appellant 18 animal unit months of grazing use on two non-contiguous 40-acre tracts of land near the Tiber Reservoir in Liberty County, Montana. The lease gave appellant grazing use on this land from April 1 to November 30 for 10 years, starting in 1973.

In April 1975, the Montana State Department of Fish and Game (Fish and Game) expressed interest in entering into an agreement with the BLM to bring land adjacent to the Tiber Reservoir under its management. Fish and Game planned to eliminate livestock in this area by fencing it, in order to allow the vegetation there to improve and to use the area as a wildlife sanctuary. On June 16, 1976, the BLM and Fish and Game entered into a cooperative agreement which provided that the BLM would furnish Fish and Game with tracts of land for use in conjunction with this wildlife habitat improvement fencing project. This agreement purported to furnish Fish and Game with, among others, the two 40-acre tracts on which appellant held this grazing lease.

On June 23, 1976, the BLM's District Manager in Malta, Montana, issued a decision cancelling appellant's grazing lease effective November 30, 1976, in accordance with 43 CFR 4125.1-1(i)(5), in order to free the land for use by Fish and Game. Appellant filed a timely notice of appeal of this decision on July 21, 1976, but the case file was not promptly forwarded to the Montana State Office for dispatch to this Board, owing to a delay resulting from reorganization of the BLM offices in Montana. The case file was received by this Board on February 4, 1977.

[1] Section 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970), provides in part as follows:

The Secretary of the Interior is further authorized, in his discretion, where vacant, unappropriated, and unreserved lands of the public domain are so situated as not to justify their inclusion in any grazing district to be established pursuant to sections 315-315g, 315h-315m, 315n, 315o and 315o-1 of this title, to lease any such lands for grazing purposes, upon such terms and conditions as the Secretary may prescribe \* \* \*. (Emphasis supplied.)

Thus, the Department is empowered to impose terms and conditions on grazing leases. The terms and conditions applicable to grazing leases which have been established by the Department are set out in 43 CFR 4125.1-1, which provides in part as follows:

(i) Terms and Conditions. The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.

\* \* \* \* \*

(5) The area of the leased land may be reduced if it is determined that the land is required for \* \* \* wildlife habitat \* \* \*.

Although this section mentions only the reduction of the area of leased land, 43 CFR 4125.1-1(h) recognizes that this reduction may be in whole or in part. We conclude that, under the terms and conditions placed by the Department on the continued effectiveness of grazing leases, as allowed by Section 15 of the Taylor Grazing Act, *supra*, appellant's grazing lease may be canceled in its entirety in order to use the tracts of land included in it as a wildlife habitat. 1/ Insofar as it canceled appellant's grazing lease, we affirm the district manager's decision.

[2] However, section 402(g) of FLPMA, 43 U.S.C. § 1752(g) (Supp. \_\_197\_\_), establishes a new rule governing all cancellations of grazing leases by the Government after October 21, 1976, the effective date of the Act:

1/ The Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.* (Supp. \_\_197\_\_) does not alter this result. To the contrary, cancellation in whole of a grazing lease pursuant to the terms and conditions imposed by the Department is expressly allowed by FLPMA. Section 402(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1752(a) (Supp. \_\_197\_\_), provides as follows:

"Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 *et seq.*) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a-1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the eleven contiguous Western States, shall be for a term of ten years, subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease." [Emphasis supplied.]

(g) Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in case of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification. (Emphasis supplied.)

The decision by the BLM's district manager did not cancel appellant's grazing lease until November 30, 1976, which is after the effective date of the Act. It is immaterial that this decision was issued in June 1976. Since the date of actual cancellation of this lease did not occur until after the effective date of FLPMA, we hold that its provisions governed this cancellation.

FLPMA's cancellation provisions, set out in section 402(g), supra, clearly require that appellant has been given at least 2 years' notification prior to the cancellation of his lease in order for the Government to be able to use the lands concerned for another public purpose, unless an emergency situation existed which required that the lease be canceled at once. This provision is construed as applicable to all existing grazing leases, licenses and permits, including those issued prior to the Act. 2/

There is nothing in the record indicating that appellant was notified of the cancellation of his grazing lease until June 23, 1976, when the District Manager issued his decision. There is a letter in the record dated August 14, 1975, in which the BLM Area Manager indicated that he might go to talk to appellant about the project. However, there is no indication that he ever actually did so. Nor is there any information in the record to indicate that there was an emergency which would justify the immediate cancellation of appellant's lease.

In considering on remand when the cancellation of appellant's lease may be effected, the BLM should determine when explicit

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2/ This construction is in accord with that expressed in the memorandum opinion dated February 15, 1977, by the Acting Associate Solicitor, Division of Energy and Resources to the Regional Solicitor, Salt Lake City.

notification was given to appellant that his lease was canceled. The BLM should also consider whether an emergency exists which requires the immediate cancellation of appellant's lease. In the absence of facts establishing that such an emergency exists or that appellant was given such notification prior to June 23, 1976, the BLM is directed not to give effect to the cancellation of appellant's grazing lease until June 23, 1978. Appellant should also be given the opportunity to demonstrate the value of the improvements which he made on this land, to which he alludes in his statement of reasons, so that it may be determined if he is entitled to receive reimbursement therefor as provided in section 402(g) of FLPMA, supra.

We perceive no reason to interfere with the cooperative agreement between the BLM and Fish and Game. Fish and Game's rights in the land in question are subject to appellant's grazing privileges, however, until such time as the cancellation of appellant's grazing lease may properly be given effect.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, reversed in part and remanded for further action consistent with this opinion.

Edward W. Stuebing  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Joan B. Thompson  
Administrative Judge

